No. 10-1491

In The Supreme Court of the United States

ESTHER KIOBEL, INDIVIDUALLY AND ON BEHALF OF HER LATE HUSBAND, DR. BARINEM KIOBEL, ET AL.,

Petitioners,

v.

ROYAL DUTCH PETROLEUM CO., ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF OF INTERNATIONAL LAW PROFESSORS AS *AMICI CURIAE* SUPPORTING RESPONDENTS

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INTEREST OF *AMICI CURIAE*

Amici curiae are professors of international law and corporate criminal law from institutions of higher learning around the world. They have substantial knowledge and experience, teaching, researching, and advising private citizens, governments, and others on issues of customary international law and other international legal matters. They offer this Brief in support of defendants'-respondents' position that customary international law does not extend the scope of liability to corporations, criminally or non-criminally, in any manner relevant to the pending lawsuit. Short summaries of *amici's curricula vitae* are attached to this Brief as an Appendix.[1]

Amici law professors have an interest in these proceedings because the question posed inquires as to matters of customary international law, to which *amici* all have devoted a considerable portion of their professional lives. Additionally, as members of the global legal community, *amici* all have a substantial interest in assisting this Court in its endeavor to reach the proper result under customary international law.

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[1] No counsel for any party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel contributed money to the preparation or submission of this brief. The parties have consented to this filing.

SUMMARY OF ARGUMENT

Before this Court is the issue whether customary international law extends the scope of liability to corporations, criminally or non-criminally, in any manner relevant to the pending lawsuit. For the reasons set forth below, we conclude that customary international law never has extended, and currently does not extend, liability to corporations in any manner relevant to this case. Most importantly, customary international law did not extend liability to corporations for the claims alleged in this lawsuit, which alleges events occurring between 1992 and 1995. (Pet. Br. at 3.)

The Second Circuit in the decision before the Court correctly concluded that "[t]he concept of corporate liability for violations of customary international law has not achieved universal recognition or acceptance as a norm in the relations of States with each other." *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 149 (2d Cir. 2010). Judge Korman reached the same conclusion in an earlier proceeding, where he accurately stated: "The sources evidencing the relevant norms of international law at issue plainly do not recognize such liability." *Khulumani v. Barclay Nat'l Bank Ltd.*, 504 F.3d 254, 321 (2d Cir. 2007) (Korman, J., concurring in part and dissenting in part).[2] Professor James Crawford S.C., Professor of

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[2] Only Judge Korman addressed the issue of corporate liability under customary international law in *Khulumani*.

International Law and formerly Director of the Lauterpacht Centre for International Law at Cambridge University, a recognized expert on international law, was also correct when he informed the Second Circuit in yet another matter that "[t]here are no decisions of international courts or tribunals where a corporation has been found liable, either criminally or civilly, for a breach of international law." Exhibit B ¶ 9 (previously filed with the Second Circuit on January 22, 2009 in *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, No. 07-0016-cv).

In this Brief, *amici* explain why the *Kiobel* majority, Judge Korman and Professor Crawford are all correct, as well as the basic reasons why customary international law does not provide for corporate liability. In setting forth the analysis below, *amici* have adhered closely to this Court's definition of "customary international law" – *i.e.*, rules that "rest on a norm of international character accepted by the civilized world" and defined with specificity. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 725 (2004); *see also Flores v. Southern Peru Copper Corp.*, 414 F.3d 233, 250-52 (2d Cir. 2003) (customary international law requires rules that "States universally abide by, or accede to, . . . out of a sense of legal obligation and mutual concern"). This definition, of course, excludes international instruments that are *non*-obligatory, such as declarations, policy recommendations, non-binding codes, or resolutions. *Sosa*, 542 U.S. at 734; *cf.* U.N. Comm'n on Human Rights, *Promotion & Protection of Human Rights*, U.N. Doc. E/CN.4/2006/97, ¶ 61 (Feb. 22, 2006)

("All existing instruments specifically aimed at holding corporations to international human rights standards . . . are of a voluntary nature."). It also excludes domestic laws because – although corporate liability is *not* recognized in the domestic laws of many sovereigns – as the Second Circuit has observed, "[e]ven if certain conduct is universally proscribed by States in their domestic law, that fact is not necessarily significant or relevant for purposes of customary international law." *Flores*, 414 F.3d at 249. What is critical is that sovereign states feel obligated by international law to follow the rule in question, and that there is virtual uniformity of State practice in the manner in which the rule is applied.

Analyzing the question posed under customary international law, as we understand the Court to be using that term, it is clear that such law does not extend the scope of liability to corporations in any relevant circumstance, and it certainly did not extend such liability during the time period involved in this lawsuit.

ARGUMENT

I. CUSTOMARY INTERNATIONAL LAW DOES NOT EXTEND CRIMINAL OR NON-CRIMINAL LIABILITY TO CORPORATIONS IN ANY CIRCUMSTANCE RELEVANT TO THIS CASE

As both the *Kiobel* majority and Judge Korman recognized, the international community has, on many occasions, expressly debated, considered, and *rejected* corporate liability under customary international law in circumstances relevant to this case. *Kiobel*, 621 F.3d at 132-41; *Khulumani*, 504 F.3d at 322-24.

One recent example is provided by negotiations relating to the Rome Statute of the International Criminal Court, 37 I.L.M. 999, where "France proposed bringing corporations and other juridical persons . . . within the jurisdiction of the ICC." *Khulumani*, 504 F.3d at 322-23. For the reasons discussed below in Section III, France's proposal was rejected, and "the Rome Statute provides for jurisdiction over only 'natural persons.'" *Id.* at 323 (citing Article 25(1) of the Rome Statute, 37 I.L.M. at 1016 (entered into force 1 July 2002)).

Similarly, in 2007, when considering rules of conduct – ultimately not adopted – applicable to corporate liability for human rights violations, a United Nations report surveyed a large number of international conventions and laws and noted: "In conclusion, it does not seem that the international human rights instruments discussed here currently impose

direct liabilities on corporations." Special Representative of the U.N. Secretary-General (Professor John Ruggie), *Report on Implementation of Gen. Assembly Res. 60/251 of 15 March 2006 Entitled "Human Rights Council,"* U.N. Doc. A/HRC/4/35, ¶ 44 (Feb. 19, 2007).

Focusing specifically on the customary international law that speaks to the types of conduct alleged in plaintiffs' complaint makes it even clearer that such laws do not extend to corporate liability. *Cf. Sosa*, 542 U.S. at 732 n.20 (focus should be on whether the "given norm" at issue "extends the scope of liability" to "a private actor such as a corporation"). The relevant treaties have repeatedly and expressly confined liability by using "natural persons," "individuals," or other terms showing that liability is not extended to abstract legal entities such as corporations. For example:

- The Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, Art. 6(1), *adopted* May 25, 1993, S.C. Res. 827, U.N. Doc. S/RES/827 (limiting subject matter and jurisdiction to "natural persons").[3]

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[3] In discussing the Statute prior to passage, and stressing the international legal principle that tribunals only "should apply rules of international humanitarian law which are beyond any doubt part of customary law," the U.N. Secretary General rejected the idea that "a juridical person, such as an association

(Continued on following page)

- The Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States Between 1 January 1994 and 31 December 1994, Art. 2-6, *adopted* Nov. 8, 1994, S.C. Res. 955, U.N. Doc. S/RES/955 (limiting subject matter and jurisdiction to "natural persons").

- The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Arts. 4(1), 6(1), 6(3), adopted Dec. 10, 1974, 1465 U.N.T.S. 85 (extending liability only to natural persons); *see, e.g.*, *Khulumani*, 504 F.3d at 323-24 (observing that U.S. law implementing this Convention, the Torture Victim Protection Act, in using the term "individuals," also extends liability only to natural persons).

- The Convention on the Prevention of the Crime of Genocide, Art. IV, Dec. 9, 1994, 78 U.N.T.S. 277 (providing that only "constitutionally responsible rulers, public officials, or private individuals" can be punished).

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or organization" could be subject to the jurisdiction of the International Tribunal. *See* Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 ¶ 51, U.N. Doc. S/25704 (May 3, 1993).

- The Charter of the International Military Tribunal for the Far East, January 19, 1946, as amended April 26, 1946, art. 5, T.I.A.S. No. 1589 ("The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offense. . . .").

- The International Convention on the Suppression and Punishment of Apartheid, 1973, Art. III ("International criminal responsibility shall apply, irrespective of the motive involved, to *individuals*, *members* of organizations and institutions and *representatives* of the State in which the acts were perpetrated or in some other State, whenever they [commit acts of apartheid.]") (emphasis added).[4]

- The Charter of the International Military Tribunal (Nuremberg), Oct. 6, 1945, art. 6, 81 U.N.T.S. 284, 286 (Tribunal had power only "to try and punish persons who . . . , whether

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[4] The U.S. "has consistently recorded serious reservations" about this Convention and has not agreed to be bound by its terms because it objects to the "extension of international jurisdiction embodied in the Convention, which would include even cases in which there was no significant contact between the offence and the forum state and in which the offender was not a national of the forum state. . . ." 1974 DIGEST OF U.S. PRACTICE IN INT'L LAW 134 (Office of the Legal Adviser, U.S. Department of State, Arthur W. Rovine, ed.). In other words, the U.S. has objected to the Apartheid Convention because the type of extraterritorial jurisdiction it seeks to establish "ignore[s] the rules of law," in the U.S.'s view. *Id.*

as individuals or members of organizations," committed certain crimes).[5]

There are, of course, some conventions and statutes that do not expressly address the issue of corporate liability. But the absence of a reference excluding corporate responsibility from the scope of a treaty does not – and cannot – imply a tacit acknowledgment of corporate liability. In international law, the principle of *nullum crimen sine lege* (*i.e.*, there can be no crime without a law) is well established. To provide an example, the Statute for the Special Court for Sierra Leone omits the provision (appearing in the Yugoslav and Rwandan Statutes discussed above) that expressly confines jurisdiction to natural persons. U.N. S.C. Res. 1315 (Aug. 14, 2000). But "there is no doubt that so far actual prosecutions under the statute 'have been confined to natural persons.'" William A. Schabas, *The UN Int'l Criminal Tribunals: The*

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[5] In both the Nuremberg Charter and the foregoing Apartheid Convention, organizations could be (or were) declared "criminal." Nuremberg Charter, Art. 9; Apartheid Convention, Art. I(2). But the organization itself could not be punished or have liability assessed against it. Apartheid Convention, Art. III. At Nuremberg, the consequence of such a declaration was that only *individuals* could be assessed punishment based on membership in the organization (Art. 10 & 11). *See Khulumani*, 504 F.3d at 322 n.10 (Korman, J.) (explaining this concept in more detail). Thus, these laws recognize that, despite criminal acts by natural-person corporate agents, liability cannot extend to corporations. This distinction is also seen in the *I.G. Farben Trial*, discussed in Part II.

Former Yugoslavia, Rwanda & Sierra Leone 139 (2006) (internal citation omitted).

In any event, the U.S. Alien Tort Statute, 28 U.S.C. § 1350, allows enforcement of customary international law only where such law is "specific, universal, and obligatory." *Sosa*, 542 U.S. at 732; *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 174 (2d Cir. 2009). Thus, as this Court has already recognized, the proper question here is whether there is a specific, universal and obligatory norm of international law *extending* the scope of liability to the type of defendant before the court, in this case corporations. *Sosa* at 733 n.20 ("A related consideration is whether international law *extends* the scope of liability for a violation of a given norm to the perpetrator being sued, if the defendant is a private actor such as a corporation or individual.") (emphasis added); *id* at 760 ("The norm must extend liability to the type of perpetrator (e.g., a private actor) the plaintiff seeks to sue.") (Breyer, J., concurring); *see also, e.g., North Sea Continental Shelf Cases*, 1969 I.C.J. 3, ¶ 74 (Feb. 20, 1969) (conventions and other sources of international law do not become "customary international law" until recognition of the law is "both extensive and virtually uniform in the sense of the provision invoked, and . . . [has also] occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved").

Those using different rules of construction (such as U.S. rules of statutory construction, where absence of expression can sometimes be significant) have sometimes focused on irrelevant questions, *e.g.*, whether

corporations are affirmatively *immunized* from liability under various sources of law. *See, e.g., In re Agent Orange Litig.*, 373 F. Supp. 2d 7, 58 (E.D.N.Y. 2005); *Kiobel*, 621 F.3d at 153 (Leval, J., concurring). This Court correctly stated the law in recognizing that an affirmative *extension* of liability to corporations is the only way to create liability over corporations under the customary international law that is applied through the U.S. Alien Tort Statute. *See also Kiobel*, 621 F.3d at 120 ("We emphasize that the question before us is not whether corporations are 'immune' from suit under the ATS: That formulation improperly assumes that there is a norm imposing liability in the first place.")

II. NO INTERNATIONAL TRIBUNAL EVER HAS FOUND A CORPORATION LIABLE FOR VIOLATING CUSTOMARY INTERNATIONAL LAW

Consistent with the rejection of corporate liability in relevant customary international law, there is an absence of decisions by international tribunals imposing corporate liability. Well-respected international legal expert, Professor James Crawford S.C., averred to the Second Circuit in 2007 (well after the events at issue in this lawsuit) that "[t]here are no decisions of international courts or tribunals where a corporation has been found liable either criminally or civilly, for a breach of international law." Exhibit B ¶ 9. A respected panel of experts from the International Commission of Jurists also confirms: "So far, no international

criminal tribunal has had jurisdiction to try a company as a legal entity for crimes under international law." International Comm'n of Jurists, 2 REPORT OF THE INT'L COMM'N OF JURISTS EXPERT LEGAL PANEL ON CORPORATE COMPLICITY IN INT'L CRIMES 56 (2008). *Amici* verify that the findings of Professor Crawford and the International Commission of Jurists are still accurate. *Amici* have, among other things, surveyed the decisions and rulings covered in the International Law Reports and International Legal Materials, both before and after these statements were written.

As discussed above, because customary international law is developed through extensive and virtually uniform recognition of established rules (*i.e.*, the creation of a "custom"), the complete absence of decisions imposing civil or criminal liability for a breach of international law further establishes that no concept of corporate liability exists in customary international law, particularly in any circumstance relevant to the claims at issue here. Decisions relevant to the question before this Court only affirm the conclusion that customary international law does not extend to corporations. For example, when explaining why such law focuses on personal responsibility of individuals, the Nuremberg Tribunal observed that "[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced." *The Nuremberg Trial*, 6 F.R.D. 69, 110 (1946), quoted in 4 Dec 2009 Order at 2.

Indeed, corporate liability was expressly rejected in the *I.G. Farben Trial. United States v. Krauch*, 7 *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10* (1952). During World War II, I.G. Farben was a large conglomerate of chemical companies that cooperated with the Nazi regime, notoriously supplying poison gas used in the concentration camps. Twenty-four directors of I.G. Farben were charged with "acting through the instrumentality of Farben," and thirteen were convicted. *Id.* Although I.G. Farben's conduct was repeatedly characterized as "criminal" during the trial, the corporation itself could not be prosecuted. *United States v. Krauch*, 8 *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10* 1081, 1152-53 (1952) ("[T]he corporate defendant, Farben, is not before the bar of this Tribunal and cannot be subjected to criminal penalties in these proceedings. . . . [C]orporations act through individuals" and it was those individuals rather than the corporation to whom liability extended.).

A report following the trial verifies that I.G. Farben was not prosecuted because liability could not extend to corporations. Australia proposed that the International Law Commission of the United Nations extend liability to corporations, but "[t]he proposal was soundly defeated because 'it was undesirable to include so novel a principle as corporate criminal responsibility.'" *Khulumani*, 504 F.3d at 322 (Korman, J.) (quoting U.N. GAOR, 9th Sess., Supp. No. 12, U.N. Doc. A2645, ¶ 85 (1954)).

III. THERE ARE SIGNIFICANT REASONS WHY CUSTOMARY INTERNATIONAL LAW DOES NOT RECOGNIZE CORPORATE LIABILITY

To those trained under U.S. legal principles, the fact that customary international law does not extend criminal or non-criminal liability to corporations may seem odd or even an inadvertent "loophole." *Amici* recognize that, under U.S. law, a corporation is treated the same as a natural person in most instances and that the U.S. has made policy judgments about the wisdom of imposing corporate liability.

But "the issue [under customary international law] is not whether policy considerations favor (or disfavor) corporate responsibility for violations of international law." *Khulumani*, 504 F.3d at 325 (Korman, J.). Rather, amongst the defining prerequisites before a rule becomes customary international law enforceable through the U.S. Alien Tort Statute is that it is agreed-upon in a specific and obligatory manner by the community of nations. *Sosa*, 542 U.S. at 732.

Against this backdrop, one of the principal reasons customary international law does not extend liability to corporations is that many nations do not agree with the American way of thinking on this subject. Distinct from the U.S. view that corporations are "persons," many countries view legal entities such as corporations "as legal abstractions [that] can neither think nor act as human beings. . . ." M. CHERIF BASSIOUNI, CRIMES AGAINST HUMANITY IN INT'L CRIMINAL LAW 378 (2d ed. 1999). In countries operating

under this principle, one prevailing belief is that laws punishing conduct require the existence of a moral agent, *i.e.*, criminalization of an act is meant to pass moral judgment or condemnation onto a person, and therefore should not apply to a legal abstraction like a corporation. *See, e.g.*, International Comm'n of Jurists, 2 REPORT OF THE INT'L COMM'N OF JURISTS EXPERT LEGAL PANEL ON CORPORATE COMPLICITY IN INT'L CRIMES 58 (2008). A corporation, even if treated in some areas of the law as having certain rights and obligations, lacks the qualities of a moral agent, *e.g.*, it has no moral conscience. Thus, in countries adopting this viewpoint, corporate liability does not exist because moral condemnation can only be imposed on natural persons acting on behalf of a corporation.

In addition, and partially because of this fundamental disagreement on the "person/non-person" character of corporations, there also are no universally agreed-upon standards for such issues as the secondary liability of a corporation for the acts of an individual or for evidentiary proof of the mens rea of a corporate entity. *See, e.g.*, Kai Ambos, *Article 25: Individual Criminal Responsibility*, in COMMENTARY ON THE ROME STATUTE OF THE INT'L CRIMINAL COURT 478 (Otto Triffterer ed., 1999) ("there are not yet universally recognized common standards for corporate liability"); Special Representative of the U.N. Secretary-General (Professor John Ruggie), *Report on Implementation of Gen. Assembly Res. 60/251 of 15 March 2006 Entitled "Human Rights Council,"* U.N. Doc. A/HRC/4/35, ¶ 28 (Feb. 19, 2007) ("significant

national variation remains in modes of attributing corporate liability" based upon acts by individuals, even in countries recognizing some form of liability).

Separately, in many nations, punishment of a corporation (as opposed to individual members of a corporation) is still anathema because a corporation, as an inanimate entity, can only be punished through financial measures; it cannot be imprisoned. *See, e.g.*, International Comm'n of Jurists, 2 REPORT OF THE INT'L COMM'N OF JURISTS EXPERT LEGAL PANEL ON CORPORATE COMPLICITY IN INT'L CRIMES 58 (2008). Because of the way corporations are structured, financial penalties are paid for by current shareholders and indirectly imposed on entire economies through loss of jobs and revenue – as opposed to individuals who actually committed the morally condemned act. In many countries, it is inappropriate to impose sanctions with such indirect effects. *See, e.g.*, G. Dannecker, *Zur Notwendigkeit der Einführung kriminalrechtlicher Sanktionen gegen Verbände, Goltdammer's Archiv für Strafrecht* 101, 114 (2001). Thus, "responsibility under international law can only be responsibility of an individual. . . ." *Khulumani*, 504 F.3d at 322 (Korman, J.) (quoting Ernst Schneeberger, *The Responsibility of the Individual Under Int'l Law*, 35 GEO. L.J. 481, 489 (1947)).

These fundamental disagreements amongst nations stand in the way of any extension of liability to corporations under customary international law. Accordingly, the Rome Statute rejected corporate liability when it was entered into force in 2002. *See, e.g.*,

Intersessional Draft Report to the 1998 Rome Conference, *quoted in The Statute of the Int'l Criminal Court: A Documentary History* 221, 245 n.79 (compiled by M. Cherif Bassiouni, 1998) ("There is a deep divergence of views as to the advisability of including criminal responsibility of legal persons in the Statute."); Albin Eser, *Individual Criminal Responsibility*, in 1 ANTONIO CASSESE ET AL., THE ROME STATUTE OF THE INT'L CRIMINAL COURT: A COMMENTARY 767, 778-79 (2002) (in discussions leading to the rejection of France's proposal to extend liability to corporations, "it was emphasized that the criminal liability of corporations is still rejected in many national legal orders"). Although *amici* recognize that the U.S. and some other countries make different policy judgments supporting corporate liability, this Court correctly has held that a principle does not become customary international law enforceable through the U.S. Alien Tort Statute until (among other things) it is agreed upon by the community of nations. *See Sosa* 542 at 732. Here, there is clearly no agreement extending liability to corporations in circumstances relevant to the present case.

IV. CUSTOMARY INTERNATIONAL LAW DID NOT PROVIDE FOR CORPORATE LIABILITY DURING THE TIME PERIOD AT ISSUE

As explained above, even today, customary international law does not extend liability to corporations in relevant circumstances. In *Khulumani*, however,

Judge Korman cited a number of well-established authorities in recognizing that – because of prohibitions against the retroactive imposition of liability – the relevant question should be about customary international law as it stood in the period when each claimant alleges injury, which, in that case as in this case, was no later than the early 1990s. 504 F.3d at 325-26; *see also Prosecutor v. Tadic*, 36 I.L.M. 908, 945, Case No. IT-94-1-T, Opinion and Judgment ¶ 654 (Trial Chamber May 7, 1997) (International Tribunal "must apply customary international law as it stood at the time of the offences").

Beyond protections that exist as a matter of U.S. due process, retroactive liability violates the well-known international legal principle of inter-temporal law, and thus is impermissible. *See, e.g.*, Island of Palmas Case, 2 REPORTS OF INT'L ARBITRAL AWARDS 829, 845 (1928) (under this principle, a dispute must be adjudicated "in the light of the law contemporary with it, and not . . . the law in force at the time when a dispute . . . arises or falls to be settled"). What this means is that in every dispute there is a "critical date" determining the customary international law applicable to the claim asserted. Petitioners here allege human rights violations that occurred between 1992 and 1995.

Amici note that virtually all of the conventions cited by petitioners and their *amici curiae* post-date

the time period at issue.[6] Thus, beyond the above-referenced authorities, even petitioners' own citations confirm that customary international law did not extend liability to corporations in the period relevant to this litigation. Although debate over this issue has perhaps intensified within the community of legal scholars since the early 1990s, such continuing disagreement only highlights that during the relevant period there was no consensus among the community of civilized nations that corporations, as opposed to the men and women who work for corporations, could be held liable under international law.

CONCLUSION

Customary international law does not extend, and has never extended, liability to corporations in any circumstance relevant to the present litigation. This is verified by international treaties, international

[6] *Amici* also note that each of the conventions cited: (a) is not relevant because it does not address any conduct that is the subject of petitioners' claims; (b) is a "progressive" treaty that creates new rules binding on parties to the treaty, as opposed to reflecting or codifying customary international law; and (c) is not self-executing, but rather gives contracting states latitude to "tailor the manner in which they implement their obligations to the particular needs of their system"; *i.e.*, the conventions do not establish an obligation to proceed in a uniform fashion and thus do not meet this Court's standard for enforcement under the U.S. Alien Tort Statute. *See* 2000 DIGEST OF U.S. PRACTICE IN INT'L LAW 223 (Office of the Legal Adviser, U.S. Department of State, Sally J. Cummins and David P. Stewart, eds.).

tribunals, and numerous other sources demonstrating that there is no universal agreement on specific, obligatory, and affirmative rules by the world community. For the foregoing reasons, *amici* support affirmance of the Second Circuit's decision.

Respectfully submitted,

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APPENDIX

LIST OF AMICI

Professor Garth Abraham is an Associate Professor of Law at the University of the Witwatersrand, Johannesburg. His research, including numerous articles on aspects of international law, has been published in accredited South African and international journals. He is the principal editor of the African Yearbook of International Humanitarian Law and he serves on the editorial board of the South African Yearbook of International Law. He has participated as a jury member in a number of international student competitions; and, in 2007 he was awarded a research fellowship at the Max Planck Institute in Frankfurt. He regularly visits universities in Southern Africa and across the African continent, where he delivers guest lectures on aspects of international law.

Dr. Petra Butler is Senior Lecturer at Victoria University of Wellington and Associate Director of the NZ Centre for Public Law. She has worked at the Universities of Gottingen and Speyer (Germany) and was a clerk at the South African Constitutional Court. Before joining Victoria, she worked for the Ministry of Justice's Bill of Rights/Human Rights Team. In 2004, Dr. Butler taught international commercial contract and private international law at the Chinese University of Political Science and Law, Beijing, and won a Holgate Fellowship from Grey College, Durham University. She was a member of

the National Advisory Council to the Human Rights Commission for the National Plan of Action for Human Rights. Dr. Butler has advised numerous Government departments and barristers on human rights issues. In 2008 she held a Senior Fellowship at the University of Melbourne where she taught in the LL.M. programme.

Professor Dr. Dr. Rudolf Dolzer was Professor and Director of the Institute for International Law at the University of Bonn from 1996 to 2009. He was visiting professor at the University of Michigan, Cornell University, Massachusetts Institute of Technology, the University of Paris I (Sorbonne), the Southern Methodist University, the Institute de Empresa in Madrid, and, at the Yale Law School, was Myres S. McDougal Distinguished Visiting Scholar. From March 1992 to March 1996 Professor Dolzer was Director General at the Office of the Federal Chancellor in Germany.

Professor Rusen Ergec is professor of Public Law and International Human Rights Law at the University of Luxembourg and former Professor on the same topics at the University of Brussels. He was a member of the Brussels Bar from 1991 to 2007 and is presently an Honorary Member.

Professor Dr. Matthias Herdegen is Professor and Director of the Institute for International Law at the University of Bonn since 1995. He is honorary professor at Universidad Pontificia Javeriana (Bogota) and of the Colegio Mayor de Nuestra Sefiora del Rosario, Bogota and serves as member of the Human Rights

Committee of the International Law Association. Professor Herdegen was visiting professor at the University of Paris I (Sorbonne), the Global Law School (New York University), the University of Tel Aviv, the Universidad Autonoma de Mexico as well as adjunct professor at the City University of Hong Kong. He was vice-rector of the University of Bonn.

Professor Dr. Martin Nettesheim is Professor of Law at the Eberhard Karls University Tuebingen. He is the chair holder for European Law and Public International Law. Professor Nettesheim is on the faculty since 1999. He was visiting professor at the University of California at Berkeley, St. Thomas University of Miami, Nanjing University and Kyoto University.

Professor Dr. Carlo Enrico Paliero is Full Professor of Criminal Law and Criminal Corporate Law at University of Milan since 2000. He was Full Professor of Criminal Law at University of Macerata (from 1986 to 1989) and, later, at University of Pavia (from 1989 to 2000). Professor Paliero was visiting professor at University of Parana (Curitiba, Brazil), University of Mexico City, University of Fribourg (Switzerland) and University of Freiburg im Br. (Germany) as Humboldt-Stipendiat. He was a member of the Scientific Committee of the Italian Judiciary Supreme Council from 1996 to 1999 and, currently, co-director of the law journal Rivista Trimestrale di Diritto Penale dell'Econornia.

Professor Malcolm N. Shaw QC is a Senior Fellow at the Lauterpacht Centre for International Studies at the University of Cambridge, England. He was formerly the Sir Robert Jennings Professor of International Law at the University of Leicester and has been a practising barrister at Essex Court Chambers, London. He was also the Head of the Law Department at the University of Essex and the Founder and First Director of the Human Rights Centre there. He has also twice been a visiting fellow at the Lauterpacht Centre and has been Visiting Professor at the University of Paris Ouest (Nanterre-La Defense), France, and Lady Davis Visiting Professor at the Hebrew University of Jerusalem.

Professor Yasuhei Taniguchi is emeritus professor of Kyoto University in Japan, where he taught for 39 years civil procedure, insolvency and comparative law. He is currently Centennial Visiting Professor at Santa Clara University in California. Professor Taniguchi received basic legal education at Kyoto University (LL.B. 1957) and was fully qualified as a jurist in 1959 by completing a 2-year inning at Legal Training and Research Institute of Supreme Court. He was then appointed associate professor of Kyoto University Law Faculty and full professor in 1971. He obtained an LL.M. from UC Berkeley in 1963 and J.S.D. from Cornell University in 1964. He taught at Kyoto University until mandatory retirement in 1998. Since then he has taught at Teikyo University (1998-2000), Tokyo Keizai University (2000-2006) and Senshu University Law School (2006-2009). In addition to Santa Clara,

he has also taught at 9 other American law schools (chronologically, Michigan, Berkeley, Duke, Georgetown, Stanford, Harvard, NYU, Richmond and Hawaii), at two universities in Australia (Murdoch & Melbourne), Hong Kong University and University of Paris XII. He was one of the first Global Professors in 1995 at NYU Law School. He served as member of the Appellate Body of WTO 2000-2007 (its chairman 2004-2005). His writings have been published in Japanese, English, German, French, Italian, Portuguese and Chinese.

Professor em. Dr. Dr. h.c. Wolfgang Graf Vitzthum, L.L.M. (Columbia) is Professor emeritus at the Eberhard Karls University Tuebingen. From 1981 until 2009 he was the chair holder for Public Law including Public International Law. He was visiting professor at the University of California at Los Angeles and the University of Aix-en-Provence. He was vice-president of Tuebingen University.